



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2010-1050; FRL-9690-3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Indiana; Volatile Organic Compounds; Consumer Products**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this action we are approving into the Indiana State Implementation Plan (SIP) the addition of a new rule that sets volatile organic compound (VOC) emissions limits and other restrictions on consumer products that are sold, supplied, manufactured, or offered for sale in the State of Indiana.

**DATES:** This rule is effective [insert date 60 days after publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days from date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-1050, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. E-mail: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section,  
Air Programs Branch (AR-18J), U.S. Environmental Protection  
Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies  
Section, Air Programs Branch (AR-18J), U.S. Environmental  
Protection Agency, 77 West Jackson Boulevard, Chicago,  
Illinois 60604. Such deliveries are only accepted during  
the Regional Office normal hours of operation, and special  
arrangements should be made for deliveries of boxed  
information. The Regional Office official hours of  
business are Monday through Friday, 8:30 AM to 4:30 PM,  
excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.

EPA-R05-OAR-2010-1050. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through

[www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental

Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, [maietta.anthony@epa.gov](mailto:maietta.anthony@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background.

II. Contents of Indiana's Rule.

III. What Action is EPA Taking?

IV. Statutory and Executive Order Reviews.

#### **I. Background**

"Consumer products" encompass a wide array of sprays, gels, cleaners, adhesives, and other chemically formulated products that are purchased for personal or institutional use and that emit VOCs through their use, consumption, storage, disposal,

destruction, or decomposition. On December 7, 2010, the Indiana Department of Environmental Management (IDEM) requested that EPA approve into its SIP the addition of a new rule that limits VOC in consumer products. The rule is located within Title 326 of the Indiana Administrative Code (IAC) Article 8 "Volatile Organic Compound Rules" at 326 IAC 8-15. The rule consists of the following nine sections:

- 1) Section 1 "Applicability"
- 2) Section 2 "Definitions"
- 3) Section 3 "Standards"
- 4) Section 4, "Exemptions"
- 5) Section 5, "Innovative products exemption"
- 6) Section 6, "Alternative control plan"
- 7) Section 7, "Administrative requirements"
- 8) Section 8, "Record keeping and reporting requirements"
- 9) Section 9, "Test methods"

A discussion of each section and its approvability is included in section III of this action.

The rule that Indiana adopted and submitted to EPA for approval is based on the model rule developed by the Ozone Transport Commission (OTC) for consumer products. The OTC is a multi-state organization created under section 176A of the Clean Air Act. It is responsible for advising EPA on transport issues

and for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions.

The OTC has developed this model rule for consumer products which OTC member states have signed a memorandum of understanding to adopt. The OTC model rule that Indiana based its rule on is at least as stringent as, and in most cases is more stringent than, EPA's national consumer products rule, "National Volatile Organic Compound Emission Standards for Consumer Products," 40 CFR Part 59, Subpart C. It should be noted that Indiana is not an OTC member state. By adopting a rule that mirrors the OTC model rule, however, Indiana is strengthening its SIP through enforceable VOC limits for consumer products with corresponding recordkeeping and reporting requirements.

## **II. Contents of Indiana's Rule.**

The following is a summary of each section of 326 IAC 8-15 "Standards for Consumer and Commercial Products," as submitted on November 7, 2010, and a discussion of why each section is approvable into the State's SIP.

### **326 IAC 8-15-1 "Applicability"**

This section makes 326 IAC 8-15 applicable to any person who sells, supplies, offers for sale, or manufactures consumer

products in the State of Indiana on or after June 1, 2011. The applicability for the rule as outlined in this section is congruent with the model OTC language, and therefore is approvable for inclusion in Indiana's SIP.

#### **326 IAC 8-15-2 "Definitions"**

This section provides definitions of products, terms, acronyms, and other language that are unique and/or specific to this rule. This section is congruent with the OTC model rule, and therefore is approvable for inclusion in Indiana's SIP.

#### **326 IAC 8-15-3 "Standards"**

This section codifies VOC standards for each category of consumer products affected by 326 IAC 8-15 and includes additional requirements for certain product categories. Each category of consumer product and its associated VOC limit mirror the OTC model rule as do additional requirements for certain product categories, including:

- A ban on use of air toxics, as classified by the California Code of Regulations, in antiperspirants and deodorants
- A provision establishing how to determine the VOC content of diluted products
- Sell-through provisions for affected products that were already manufactured by June 1, 2011

- An effective date of June 1, 2012, for any products that are covered by 326 IAC 8-15 and also registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- A restriction on sale of any charcoal lighter material that has not been issued a currently effective certification by either the California Air Resources Board (CARB), or another state air agency in conjunction with EPA
- Additional requirements for aerosol adhesives, including a ban on the sale or manufacturing of aerosol adhesives containing methylene chloride, perchloroethylene, or trichloroethylene
- A requirement for floor wax strippers that ensures that product packaging clearly indicates "light/medium" and "heavy" dilution ratios that correlate with the associated VOC limits for these dilutions
- Additional requirements for products containing ozone depleting compounds
- Additional requirements for adhesive removers, contact adhesives, electrical cleaners, electronic cleaners, footwear or leather care products, general purpose degreasers, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene

This section is at least as stringent as the OTC model rule, and therefore is approvable for inclusion in Indiana's SIP.

#### **326 IAC 8-15-4 "Exemptions"**

This section outlines conditions for certain products that may allow them to be exempt from 326 IAC 8-15, including an exemption for products manufactured in the State but meant for sale outside the State. This section also allows a retailer (but not manufacturer) to not be considered in violation of 326 IAC 8-15 if they immediately discontinue sale of the violating product, and make good faith efforts to assure the product met the applicable requirements of 326 IAC 8-15. Finally, this section excludes any products that are regulated under this rule from the administrative requirements of the rule if the products are registered under FIFRA. This section is congruent with the OTC model rule, and therefore is approvable.

#### **326 IAC 8-15-5 "Innovative products exemption"**

This section allows for an exemption for products otherwise covered under 326 IAC 8-15, so long as the manufacturer has been granted an innovative products exemption by CARB or the air pollution control agency of another state with an innovative products exemption substantially equivalent to CARB's. This section then outlines additional requirements necessary for

Indiana to consider an innovative products exemption to be valid within the State. Finally, this section outlines conditions in which the innovative products exemption can expire or be revoked by the State. This section is congruent with the OTC model rule, and therefore is approvable.

#### **326 IAC 8-15-6 "Alternative control plan"**

This section outlines circumstances in which a manufacturer of a product regulated under 326 IAC 8-15 can provide an alternative method to comply with the VOC limits contained in Indiana's rule. Only manufacturers who have been granted an alternative control plan by CARB, or a state air pollution control agency with alternative control plans to consumer product VOC limits that are substantially equivalent to CARB's alternative control plan, may be exempted from the VOC limits in Indiana's rule. The section also outlines circumstances in which an approved alternative control plan can be considered valid, or can be revoked by the State. This section is congruent with the OTC model rule, and therefore is approvable.

#### **326 IAC 8-15-7 "Administrative requirements"**

This section outlines product dating and labeling requirements for consumer products manufactured or sold in Indiana. This section also defines the most restrictive limit that a product must meet if it is regulated by FIFRA as well as

326 IAC 8-15. This section is congruent with the OTC model rule and therefore is approvable.

**326 IAC 8-15-8 "Record keeping and reporting requirements"**

This section outlines the recordkeeping and reporting requirements that manufacturers of products regulated under this rule must meet. Manufacturers must keep and make available to Indiana or EPA information about their product, including:

- The product manufacturer's name and contact information.
- Any claim of confidentiality of the product.
- The product's name, and a description of the product category to which the product belongs.
- Applicable product form or forms listed separately.
- Identification of each product brand name and whether it is a household product, industrial and institutional product, or both.
- Sales of the product in Indiana in pounds per year, as well as the methodology used to achieve the calculation.
- An identification of each company that is submitting relevant data about the product (if it is manufactured using multiple companies).
- Specific net "percent by weight" information for certain compounds that may be in the product

- Specific chemical names of certain compounds used in the product formulation
- Propellant information, if propellant is used in the product

This section also specifies which information a company may present to the State if it cannot meet the requirements listed above. Finally, this section contains special reporting requirements for products that contain perchloroethylene or methylene chloride. This section is congruent with the OTC model rule, and therefore is approvable.

#### **326 IAC 8-15-9 "Test methods"**

This section outlines methods acceptable to the State that manufacturers can use to determine compliance with the VOC content limits outlined in the rule. Manufacturers may use CARB Method 310, a method approved in writing both by the State of Indiana and EPA, or through calculation of the VOC content of constituents used to make the product. This section also includes the approved method to test whether a product is a liquid or solid, and the approved method to determine the distillation points of petroleum distillate-based charcoal lighter materials. This section is congruent with the OTC model rule, and therefore is approvable.

#### **III. What Action is EPA Taking?**

EPA is approving into the Indiana SIP Title 326 IAC Article

8-15 as adopted by the State of Indiana and as submitted to EPA on December 7, 2010. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days from the date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days from the date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action

will be effective [insert date 60 days from the date of publication in the Federal Register].

#### **IV. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9,

2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements, Volatile organic  
compounds.

Dated: June 11, 2012.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52-- [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (c) is amended by adding a new entry in "Article 8. Volatile Organic Compound Rules" for "Rule 15. Standards for Consumer and Commercial Products" in numerical order to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED INDIANA REGULATIONS**

Indiana Citation	Subject	Indiana Effective Date	EPA Approval Date	Notes
* * * * *				
<b>Article 8. Volatile Organic Compound Rules</b>				
* * * * *				
Rule 15. Standards for Consumer and Commercial Products				
8-15-1	Applicability	12/1/2010	[insert the date of publication in the Federal Register], [Insert page number where the document begins]	
8-15-2	Definitions	12/1/2010	[insert the date of publication in the Federal Register], [Insert page number where the document begins]	
8-15-3	Standards	12/1/2010	[insert the date of publication in the Federal Register], [Insert page number where the document begins]	
8-15-4	Exemptions	12/1/2010	[insert the date of publication in the Federal Register], [Insert page number where the document begins]	
8-15-5	Innovative products exemption	12/1/2010	[insert the date of publication in the Federal Register], [Insert page number where the document begins]	

8-15-6	Alternative control plan	12/1/2010	<u>[insert the date of publication in the Federal Register]</u> , <u>[Insert page number where the document begins]</u>	
8-15-7	Administrative requirements	12/1/2010	<u>[insert the date of publication in the Federal Register]</u> , <u>[Insert page number where the document begins]</u>	
8-15-8	Record keeping and reporting requirements	12/1/2010	<u>[insert the date of publication in the Federal Register]</u> , <u>[Insert page number where the document begins]</u>	
8-15-9	Test methods	12/1/2010	<u>[insert the date of publication in the Federal Register]</u> , <u>[Insert page number where the document begins]</u>	
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[FR Doc. 2012-15688 Filed 06/28/2012 at 8:45 am; Publication

Date: 06/29/2012]